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Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 184-9

NOV 12 1947

CHARLES ELMORE DODD
CLERK

IN THE MATTER

of

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor,

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor-Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY, *as remaining member of the First and Refunding Group*, CENTRAL HANOVER BANK AND TRUST COMPANY, *et al.*, *as Trustees*, THE NATIONAL CITY BANK OF NEW YORK, *as Trustee*, J. HAMILTON CHESTON, *et al.*, JOHN C. TRAPHAGEN, *et al.*, JAMES G. BLAINE, *et al.*,

Respondents.

**PETITION OF DEBTOR-PETITIONER FOR
REHEARING OF ORDER DENYING
WRIT OF CERTIORARI**

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
Debtor-Petitioner

JOHN GERDES,

HENRY F. TENNEY,

Attorneys.

November 11, 1947.

Supreme Court of the United States

OCTOBER TERM, 1947

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THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor,

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Respondents.

PETITION OF DEBTOR-PETITIONER FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI

The debtor respectfully petitions for a rehearing of the order denying its application for a writ of certiorari in the above entitled proceeding.

Mr. Justice Rutledge in his opinion concurring with the majority of this Court in denying the petition for certiorari, states that he does so because:

"The Commission's letter does not afford any adequate basis for reaching a contrary conclusion, and in the absence of any more positive or helpful suggestion upon the merits of the applications as made on the record before us, I agree with the Court that the petitions should be denied."

Since the denial of the application for a writ of certiorari, the debtor has made efforts to secure a "more positive or helpful suggestion" from the Commission. It wrote the following letter to the Chairman of the Commission:

October 28, 1947

Honorable Clyde B. Aitchison,
Chairman, Interstate Commerce Commission
Washington 25, D. C.

Re: The Chicago, Rock Island and Pacific
Railway Company Reorganization

Dear Sir:

The debtor in the above proceeding respectfully requests the Interstate Commerce Commission to express publicly its view as to the desirability of a reconsideration of the present plan in the light of the "material changes in the situation as it affects the condition of the debtor" which were referred to in your letter to Chief Justice Vinson under date of October 9, 1947.

Since the aforesaid letter was sent, the United States Supreme Court has denied the applications for writs of certiorari, apparently on the ground (as appears from the opinion of Mr. Justice Rutledge) that your letter of October 9, 1947 "does not afford an adequate basis" for a grant of certiorari "in the

absence of any more positive or helpful suggestion upon the merits of the applications”.

The rights of thousands of junior creditors of this debtor should not be sacrificed by a situation in which the Commission refuses to express its views on the merits of the plan in the light of changed conditions, and, because of such refusal, the courts refuse to pay any attention to the expressed attitude of the Commission that material changes in the situation have occurred in the condition of the debtor.

The debtor does not submit with this letter any data on the changes in conditions, since it is apparent that the Commission itself has recently examined the situation and has reached the conclusion that such changes have occurred. The Commission's view is amply supported by the recent earnings of the debtor and by its vastly improved physical and financial condition, to which reference is made by the Trustees in an advertisement which appeared on page 20 in the New York Herald Tribune, October 1, 1947, a copy of which is enclosed.

The time to make application to the United States Supreme Court for a rehearing of its refusal to grant writs of certiorari expires November 14, 1947. It is therefore respectfully urged that the Commission act on this request at the earliest possible moment in order that the matter may be presented to the Supreme Court before such date.

Yours very truly,

JOHN GERDES,
HENRY F. TENNEY,
Attorneys for The Chicago,
Rock Island and Pacific
Railway Company, Debtor.

The following letter was received in response to the foregoing:

October 31, 1947

Offices of
Charles D. Mahaffie
Commissioner

Messrs. John Gerdes and
Henry F. Tenney,
Attorneys for The Chicago, Rock Island &
Pacific Railway Company, Debtor
One Wall Street
New York 5, N. Y.

Gentlemen:

Your letter of October 28, 1947, addressed to the Chairman, has been referred to Division 4 for consideration. As we understand your suggestion, it is that the Commission should make further representations to the Supreme Court in connection with petitions to be filed asking the Court to reconsider its order of October 20 denying certiorari in the Chicago, Rock Island & Pacific Railway Company bankruptcy proceedings.

Division 4 has carefully considered your suggestion and has authorized me to advise you that it does not see its way clear to comply with it.

Yours very truly

CHARLES D. MAHAFFIE
Chairman, Division 4

As it was apparent that the Commission misunderstood the debtor's letter of October 28, 1947, the following letter

was sent to the Commission under date of November 3, 1947:

November 3, 1947

Honorable Charles D. Mahaffie,
Chairman, Division 4
Interstate Commerce Commission
Washington 25, D. C.

Re: The Chicago, Rock Island and Pacific
Railway Company Reorganization

Dear Sir:

Your prompt answer of October 31, 1947 to our letter of October 28, 1947 is greatly appreciated.

We understand your reluctance to make further representations to the Supreme Court in the Rock Island situation, since there are now no proceedings pending before it. We therefore refrained, in our letter of October 28, 1947, from asking you to submit anything to the Court. The parties, however, desire to know the opinion of the Commission as to whether the "material changes in the situation as it affects the condition of the debtor" are such as to warrant changes in the Rock Island plan. We therefore respectfully request you to give us your views on this matter.

Yours very truly,

JOHN GERDES
HENRY F. TENNEY,
Attorneys for The Chicago,
Rock Island and Pacific
Railway Company, Debtor.

The following reply has just been received from Commissioner Mahaffie:

November 6, 1947

Offices of
Charles D. Mahaffie
Commissioner

Messrs. John Gerdes and
Henry F. Tenney,
Attorneys for The Chicago, Rock Island &
Pacific Railway Company, Debtor
One Wall Street
New York 5, N. Y.

Gentlemen:

This will acknowledge receipt of your letter of the 3rd instant in which you ask for my views as to whether the "material changes in the situation as it affects the condition of the debtor" are such as to warrant changes in the Rock Island plan.

As stated in my letter of October 31, 1947, Division 4 had authorized me to advise you that it did not see its way clear to comply with the request in your letter of October 28, 1947. Under the circumstances, it would be inappropriate for me to express any personal views concerning the matter. Expression of a Commissioner's personal views regarding a proceeding is rather plainly treated in the Court's opinion in *Minneapolis & St. Louis R. R. Co. v. Peoria & P. U. Ry. Co.*, 270 U. S. 580, 585. Speaking of an order of the Commission, the Court stated that "it cannot be affected by what a member of the Commission may declare informally was intended".

Yours very truly,

CHARLES D. MAHAFFIE
Commissioner

As the time to file this application for a rehearing expires on November 14, 1947, it is no longer possible, in advance of the filing of this application, to pursue the matter with the Commission to obtain its definitive views on the question as to whether the "material changes in the situation as it affects the condition of the debtor" are such as to make it desirable, in the opinion of the Commission, to reconsider the Rock Island plan, although Commissioner Mahaffie's letter of November 6th clearly misconstrues the debtor's request as being a request for a personal opinion rather than a request for the views of the Commission.

The reluctance of the Commission to express its view as to the necessity for changes in the plan to meet changed economic conditions is apparently due to a reluctance to interfere with court processes. An expression of its view could have effect upon the court proceedings only if its view is that the plan should be changed. We may therefore justifiably draw the conclusion that this is the view which it would express if requested by the Court. Obviously, an expression by the Commission of the view that the plan should not be changed would not interfere with the opinion expressed by the Court, and there would be no hesitancy on the part of the Commission in expressing such a view.

In order to avoid grave injustice, the debtor respectfully asks this Court to request the Commission to file a brief with it specifying whether the Commission deems changes should be made in the plan to meet the change in the economic status of the debtor, and specifying the changes, if any, which it deems should be made. In the meantime, it is requested that this Court withhold a decision on this application for a rehearing until the receipt by it of such brief from the Commission.

The question of whether it is proper for the Commission to file a brief without a prior request from the Court

is purely a matter of procedure. Such a procedural question should not stand in the way of this Court's ascertaining exactly what the Commission's views now are. A grave injustice may be done to thousands of investors if this Court does not request the Commission to state its views on the plan.

The debtor asks the Court to take no final action on this petition without asking the Commission to make a definite statement of its present position.

Respectfully submitted,

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
Debtor-Petitioner.

JOHN GERDES,
HENRY F. TENNEY,
Attorneys.

November 11, 1947.

Certificate

WE, JOHN GERDES and HENRY F. TENNEY, counsel for The Chicago, Rock Island and Pacific Railway Company, debtor-petitioner, hereby certify that this petition for rehearing is filed in good faith and not for delay.

JOHN GERDES,
HENRY F. TENNEY.

November 11, 1947.